

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AGREEMENT OF BOONE COUNTY WATER AND SEWER)	
DISTRICT AND SANITATION DISTRICT NO. 1)	CASE NO. 90-216
OF CAMPBELL AND KENTON COUNTIES)	

O R D E R

On July 2, 1990, Boone County Water and Sewer District ("Boone District") filed with the Commission a special contract with Sanitation District No. 1 of Campbell and Kenton counties ("Sanitation District No. 1") concerning the provision of sewer service to portions of Boone County. Finding that additional time was required to review this contract, the Commission suspended its operation and established this case. Boone District has moved for dismissal of this case on jurisdictional grounds. For reasons stated herein, we deny Boone District's motion but approve the special contract.

Boone District advances three arguments in support of its motion to dismiss. It first argues that the special contract concerns the ownership and operation of sewer collector lines. As such lines neither treat sewage nor are used in connection with its treatment, Boone District asserts, its ownership and operation

of these lines do not meet the statutory definition of a utility¹ and are, therefore, outside Commission jurisdiction.

The argument covers ground well travelled. The Commission addressed and rejected it in Case No. 90-108.² For the same reasons articulated on that occasion, we now reject it.

Boone District next argues that the Commission is precluded from interfering with Sanitation District No. 1's right to contract. Referring to Pub. Serv. Comm'n v. Sanitation District No. 1 of Shelby County, 87-CI-1273 (Franklin Cir. Ct. Oct. 28, 1987), and to the Commission's subsequent disclaimer of jurisdiction over sanitation districts,³ Boone District contends that the Commission may not infringe upon or interfere with any power expressly granted to a sanitation district by statute. KRS 220.285 provides that sanitation districts may "make contracts . . . to provide for the collection . . . of sewage . . . produced outside the county. . . ." Sanitation District No. 1 is exercising this power in the instant case.

¹ KRS 278.010(3) defines a "utility" in pertinent part as "any person except a city, who owns, controls or operates or manages any facility used or to be used for or in connection with . . . [t]he treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district."

² Case No. 90-108, Americoal Corporation vs. Boone County Water and Sewer District, Order dated October 30, 1990.

³ Letter from Forest M. Skaggs, Executive Director of the Public Service Commission, to all Sanitation Districts (April 5, 1988) (discussing Commission jurisdiction).

This argument reflects a misapplication of the Court's reasoning in Sanitation Dist. No. 1 of Shelby County and the Commission's reasoning in its disclaimer of jurisdiction to the facts at bar. Unlike Sanitation Dist. No. 1 of Shelby County where we sought to compel a sanitation district to obtain a Certificate of Public Convenience and Necessity before commencing construction of facilities, we are not attempting to compel or restrain any action of any sanitation district. This Commission's focus is centered solely on a water and sewer district. As the special contract may affect the rates and service provided by Boone District, it falls squarely within our domain. The Commission has "the right and duty to regulate rates and services [of sewer utilities], no matter what a contract provided." Bd. of Education of Jefferson County v. William Dohrman, Inc., Ky.App., 620 S.W.2d 328, 329 (1981).

It is interesting to note that, when disclaiming jurisdiction over sanitation districts, the Commission noted a significant difference between such districts and water districts. We stated:

After reexamining KRS Chapter 278, the Commission concludes that the failure of the legislature to make specific reference to sanitation districts within Chapter 278 is persuasive evidence that the legislature intended to deny the Commission jurisdiction over sanitation districts. By comparison, KRS Chapter 278 has been amended to bring under Commission jurisdiction both water associations organized pursuant to KRS Chapter 273 (KRS 278.012), and water districts organized pursuant to KRS Chapter 74 (KRS 278.015). Based upon this analysis, the Commission has concluded that sanitation districts are not utilities within the meaning of KRS 278.010(3)(f), and are therefore exempt from regulation by the Public Service Commission.

Letter from Forest M. Skaggs, Executive Director of the Public Service Commission, to all Sanitation Districts (April 5, 1988) (discussing Commission jurisdiction). Clearly in disclaiming jurisdiction over sanitation districts, we did not intend to wash our hands of any jurisdictional matter involving water districts.

Finally, to accept Boone District's argument is to accept the principle that a regulated utility may evade Commission jurisdiction merely by contracting with a non-jurisdictional sanitation district. We can find no legal authority to support such principle nor are we able to glean from the language of KRS Chapters 220 and 278 that the General Assembly intended such a result.

Finally, citing the Commission's holding in Case No. 89-211,⁴ Boone District argues that any contract between a regulated utility and a non-regulatory utility is outside the Commission's jurisdiction to review. This proposition, however, does not follow from the limited holding in that case. We held only that, as KRS 278.020(4) did not apply to municipal utilities, that statute did not require Commission approval of a regulated utility's acquisition of a municipal water distribution system.

⁴ Case No. 89-211, Application of Kenton County Water District No. 1 (A) For Authority to Merge the City of Independence Water Distribution System as Provided by an Existing Contract; (B) For a Certificate of Public Convenience and Necessity to Operate the Merged System Under the Uniform Rates of the District; and (C) For Authority to Defease the Remaining Bond Indebtedness of the City Water System in the Approximate Principal Amount of \$269,000 with Funds Held by the District, Order dated November 1, 1989.

In a subsequent case,⁵ we further limited that holding by ruling KRS 278.040 and Pub. Serv. Comm'n v. Southgate, Ky., 268 S.W.2d 19 (1954), required Commission approval of such acquisitions.

Having reviewed Boone District's motion to dismiss and the special contract and being otherwise sufficiently advised, the Commission finds that:

1. By virtue of its ownership and operation of sewer collection lines, Boone District is a utility as defined by KRS 278.010(3)(f).

2. Insofar as the special contract affects the rates and service of customers served by those sewer collector lines, the Commission has regulatory authority to review it.

3. Boone District's motion to dismiss should be denied.

4. The special contract is reasonable and comports with the provisions of KRS Chapter 278.

IT IS THEREFORE ORDERED that:

1. Boone District's motion to dismiss is denied.

2. The special contract is approved.


⁵ Case No. 90-219, Notice of Proposed Merger of City of Crestview, Kentucky Water Distribution System by Campbell County Kentucky Water District, Order dated October 2, 1990.

Done at Frankfort, Kentucky, this 1st day of November, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director